

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BARBARA L. STEGMAN)	
Claimant)	
VS.)	
)	Docket No. 175,984
MID AMERICA REHABILITATION HOSPITAL)	
Respondent)	
AND)	
)	
PACIFIC EMPLOYERS INSURANCE CO.)	
Insurance Carrier)	

ORDER

ON the 2nd day of November, 1993, the application of the respondent for review by the Workers Compensation Appeals Board of the Order entered herein by Administrative Law Judge Alvin E. Witwer on October 11, 1993, came regularly on for oral argument by telephone conference.

APPEARANCES

Claimant appeared by and through her attorney, James E. Martin, Overland Park, Kansas. Respondent and insurance carrier appeared by and through their attorney, Michael W. Downing, Kansas City, Missouri. There were no other appearances.

This is an appeal by respondent from a preliminary hearing order granting claimant's request for medical treatment. It is alleged that said order is subject to review by this Board as the finding of the Administrative Law Judge involved disputed issues of whether the accidental injury suffered by claimant arose out of and in the course of the claimant's employment, whether notice was timely given and, if not, whether the employer was prejudiced thereby.

Respondent admits the relationship of employer and employee existed on the dates for which accidental injury is alleged, but denies compensation benefits are due alleging accidental injury did not arise out of and in the course of the employee's employment and that notice of accidental injury on the dates alleged was not timely given to the employer by the employee, and that the employer has been prejudiced thereby.

ISSUES

- (1) Whether claimant met with personal injury by accident arising out of and in the course of her employment with the respondent beginning April 22, 1992, with subsequent aggravations each and every working day thereafter until May 17, 1992, and from June 3, 1992 through October 11, 1992.
- (2) Whether timely notice was given and, if not, whether the employer has been prejudiced thereby.

RECORD

The record in this case consists of the documents on file with the Division of Workers Compensation including the September 13, 1993 transcript of preliminary hearing proceedings and claimant's exhibits numbered one and two attached thereto, the September 29, 1993 transcript of deposition testimony of Vickie K. Ward, and the September 29, 1993 transcript of deposition testimony of Lisa Hachenberg with exhibits numbered one and two attached thereto.

It is noted that the October 11, 1993 Order entered by Judge Witwer contains a typographical error involving a date. The dates of accident are recited in the Order as being April and May 1993, but instead should have read 1992. What was intended is clear from the record. This correction can be made by nunc pro tunc order. Boyd v. Yellow Freight Systems, Inc., 214 Kan. 797, 803, 522 P.2d 395 (1974).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

- (1) The claimant met with personal injury by accident arising out of and in the course of her employment on April 22, 1992 to May 17, 1992, and June 3, 1992 to October 11, 1992, by virtue of repetitive trauma each and every day worked therein.
- (2) That notice of accident pursuant to K.S.A. 44-520 was not given by the claimant to the respondent within ten days after the initial date of accident. However, during the period for which accident is alleged claimant did advise her supervisor, Vickie Ward, of her injury. Although it is disputed as to whether or not it was specifically reported that said injury was work related, the Kansas Supreme Court in Anderson v. Air, 190 Kan. 106, 372 P.2d 294 (1962) found this distinction may be unnecessary where the respondent does not establish prejudice by failure of a particular notice. The Anderson case could be further distinguished factually were the persuasive evidence here that claimant denied her injury was work related. However, we need not reach that point here in the absence of a showing of prejudice.
- (3) That the respondent contends it was not given notice of accidental injury arising out of and in the course of the employment until it received the March 25, 1993 letter from claimant's counsel, which is Hachenberg Deposition Exhibit No. 2, and that this lack of notice prevented the respondent from utilizing its safety committee review procedure and from referring claimant to a physician for examination and treatment until March of this year. However, in the time that passed after receiving notice the respondent did not initiate any steps to obtain a medical examination of claimant. Even were this Board to accept there having been no notice until March 1993 as true, the record still does not reflect any significant prejudice to the respondent as a result of such untimely notice of claim.
- (4) That the testimony, medical evidence and record taken as a whole does not establish prejudice to the employer as a result of untimely notice of accidental injury occurring on the dates alleged. Pike v. Gas, 223 Kan. 408, 573 P.2d 1055 (1978).

WHEREFORE, it is the finding of the Appeals Board that the October 11, 1993 Order of Administrative Law Judge Alvin E. Witwer should be and is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of November, 1993.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: James E. Martin, 7101 College Blvd., Suite 200, Forth Executive Hills, Overland Park, Kansas
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